

LAW, RELIGION, MARRIAGE AND HUMAN FLOURING IN NIGERIA

PAPER PRESENTED BY HON. JUSTICE E.F. IKPONMWEN, CHIEF JUDGE, EDO STATE, NIGERIA AT THE SIXTH ANNUAL INTERNATIONAL CONFERENCE OF ACLARS ON LAW AND RELIGION IN AFRICA ON 21ST MAY, 2018

INTRODUCTION

Law is all embracing and is more understood by what it does in a society. It is a body of rules designed to regulate human conduct in a given society. It is expected that the law must be obeyed otherwise sanctions would follow hence there are ways of enforcing the laws. **Black's Law dictionary 8th Edition by Bryan A. Garner at P. 100** defines law as "the regime that orders human activities and relations through systematic application of the force of politically organised society, or through social pressure backed by force in such a society."

The main distinction between law and morality which in my view is the bed rock for religion or faith is enforceability of the law by the Court system. Where as morality cannot be enforced in a Court of law, the sanction for breach of rules of morality is the anger, indignation and surprise that may be expressed by members of the society. There are however some Legal wrongs that are also morally wrong like murder, stealing, rape etc.

Religion is defined as “a system of faith and worship usually involving belief in a Supreme being usually containing a moral or ethical code, especially such a system recognized and practiced by a particular church, Sect or denomination.”

see Black’s Law Dictionary Supra P. 1317.

Karl Max described religion as the opium of the people. Religion directly influences the inner spiritual being of the people. Religion and morality decree something bad but does not profer the reasons for its being bad, most times it is a commandment of God. The Nigeria constitution by Section 39 guarantees freedom of religion.

Law is not based on moral adulation or on any religious injunction, it is an authority or command which must be obeyed just or unjust. I agree with the natural law theorists threats that postulate that there is always morality and religion intertwined in law. Whereas law, morality and religion have sanctions in varying degrees i.e force or coercion for law, religion is fear or suffering in hell fire and morality is reprobation, repulsion and ostracism.

An erstwhile immoral act may become legal by virtue of time, circumstances and space. For example lesbianism, homosexuality. In the same vein an immoral law can be factually invalidated while still remaining legally valid. Morality can simply render a valid law ineffective, if it is unconscionable, devoid of any moral tone.

LAW AND RELIGION

Whereas law is universal in outlook, morality/Religion is sectional.

However in considering the purpose of law in the society ie (1) to regulate and ensure smooth ordering of affairs in the society (2) guiding human behavior prescribing standard of behavior (3) confers rights and imposes obligations and duties of citizens and government (4) maintenance of order.

- (5) Maintaining unity of various interests
- (6) It is a means of social engineering and promoting economic and political development
- (7) It reconciles conflicting interest
- (8) It can be used for social cleansing.

Generally a society gets the type of law it deserves through its Government and people but from the purposes above it must be used to help human flourishing by

guiding the activities of members of the society. It does not allow members of the society take their liberty for license, therefore Law should act as a form of restraint. In Nigeria the groundnorm is the 1999 Constitution which contains the fundamental rights guaranteeing right to fair hearing, liberty, speech, religion e.t.c but there is a common saying that “fundamental right is not absolute. The right of one person starts where that of the other stops”.

In fact law and morality sounds to me like law and religious beliefs and this discuss would not permit me to refer to all religious sects. My focus shall be religious as I have come to believe in the Church of Jesus Christ of Latter Day Saints. In one of the Church scriptures, Doctrine and covenant 134: 4 it states as follows:-

‘We believe that religion is instituted of God; and that men are amenable to him and to him only, for the exercise it, unless their religious opinions prompt them to infringe upon the rights and liberties of others; but we do not believe that human law has a right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms for public or private devotion, that the Civil Magistrate should restrain crime, but never control conscience, should punish guilt, but never suppress the freedom of the soul.’

It is therefore easy to see the distinction between law and religion and where they meet.

Alma a prophet in the Book of Mormon admonishes us to defend our religion see Alma 48: 13; 43: 47.

God expects us to be religious, maintaining our rights and been morally pure as enjoined by the teachings in our scriptures. Failure to adhere to the requirements of pure religion can be grave.

In James 1: 27, it is stated that “pure religion and undefiled before God and the father is this, to visit the fatherless and widows in their affliction and to keep himself unspotted from the world”.

Someone who is able to keep himself unspotted in this world is most likely to align with and obey the law.

Elder Wilford W. Anderson of the Seventy in the Ensign of July 2015 stated inter alia that “Religion and Government (Law) travel different but parallel tracks. They are most successful and most effective when they protect and encourage one another.” He stated further that “Religion and Government (Law) are like a

couple who sometimes have a hard time living together but who find they simply cannot live apart.”

Religion and government (Law) both need their independence in order to flourish, but history has shown that a complete divorce is not healthy for either.

Most countries now recognize the need for religious freedom so that they flourish and Nigeria is no exception. Religion can help in human flourishing or growth if it is properly practiced with religious extremism eliminated. Religion helps in human growth because whether as Christians, moslems, idol worshipers we all worship a supreme being and relate with others in joy or pain not wishing others within our given sect evil, empathising with each other.

Prophet Alma stated in chapter 30: 9, thus:-

“Now if a man desired to serve God, it was his privilege; or rather if he believed in God it was his privilege to serve him; but if he did not believe in him there was no law to punish him for there was a law that men should be judged according to their crimes. Never the less, there was no law against a man’s belief”.

To buttress the fact that law and religion walk the same path and in some instances they can be intertwined. I would like to refer to some cases in Nigeria where some jurists have blended them well in their judgements.

EXAMPLES:-

- (1) OPUTA JSC in Sketch V. Ajagbemokeferi (1989) 1 NWLR Pt. (100) 706** when he asked “Again, is it not a dangerous departure from Legal procedure to make the civil courts arbiters in matters of sin, heaven and hell?”
- (2) ESO JSC in Thomas & Sons V. Olufosoye (1986) 1 NSCC 355** stated that:- “Perhaps, religionists would assist themselves more, by devising a forum for settlement of their disputes and come to court only when that fails” p.336”
- (3) Ubaezonu JCA in Nigeria Army V. Gloria Mowarin (1992) 4 NWLR Pt. 235) 356**

“I would liken the applicants to a sinner who prays to God to assist him in the commission of his sins. Just as God will not listen to such a supplication, this court will not grant such a prayers”.

- (4) Ogunwunmiju JCA in Giwa Osagie V. Giwa-Osagie & anor (2009) 4 NWLR 32.**

“The Islamic faith is not strictly speaking just a religion; it is a way of life.”

(5) Tobi JSC in Inakolu V. Adeleke (2007) All FWLR Pt. 353) 123.

“The legislature is expected to abide by the provisions of the Constitution like the way the Clergyman abides by the Bible and the Imam abides by the Koran”

(6) Orah JCA in F.B.N. PLC V. Ejikeme (1996) 7 NWLR Pt. 462) 617

“The principle of fair hearing enshrined in our Constitution is a fundamental organic Law of the Land. It is as fundamental as it is devine. Even God did not pass judgement on Adam and Eve before giving them a hearing and sending them out of the Garden of Eden (see Genesis Chapter 3 verses 11 – 13 and 16 – 19)

“From God’s judgment there is appeal indeed, a fair hearing.”

(7) In Balonwu V. Obi (2007) 5 NWLR Pt. 1024) 563; Denton – West JSC
Strangely stated thus:-

“Even in hell, there is order and discipline”.

(8) Ogbeagu JCS in Nkuma V. Odili (2006) All FWLR Pt. 313) 45 held thus:-

“I am afraid miracles do not happen in litigation, at least not in our adversary system.”

It is obvious that religion and morality play an essential role in maintaining and promoting good government . It is my belief that the real solution to many of the

problems facing us today like, racism, violence, tribalism, hate crimes are spiritual needing spiritual or religious solution.

Dallin H. Oaks formerly of the Quorum of Twelve Apostles in the Church of Jesus Christ of Latter day Saints in an address “Strengthening the free Exercise of Religion” given on May 16, 2013 stated inter alia “many of the most significant moral advances in Western Society have been motivated by religious principles and persuaded to official adoption by pulpit preaching.

Examples include the abolition of the slave trade in England and the Emancipation proclamation.” Even civil Rights movement.

The society depend essentially on religion and churches to establish moral order. Government can never build enough jails to house the criminals produced by a society lacking in morality, character and faith. These attributes are better encouraged by religious observance than by legislative decree.

It is impossible for government to control the attitudes, desires and hopes that spring from the human heart. Yet these are the seeds that grow into the conduct Government must regulate.

While Governments enforce the law written in books, religion teaches and encourages adherence to the law written in the heart. Those who abide the latter will seldom if ever violate the former. **See D & C 58 : 21** which provides:-
“He that keepth the Laws of God hath no need to break the Laws of the land”
Government oversees the conduct of its citizens, it tries to get them to behave in a decent and moral way. Religion, on the other hand, tries to get them to desire to behave in a decent and moral way.

Dallin A. Oaks concluded that Religious belief in right and wrong is vital influence to produce such voluntary compliance by a large number of citizens (of the Law).

Taking law and Religion as it relates to marriage in Nigeria we have marriage under the Act, marriage by native law and custom, (Christian) Church marriage and marriage under the Islamic law.

It is in this regard that the Law, religion come into play for all to see distinctions and interaction.

Marriage is a very important and sacred institution. It is the basis of the family unit. Everybody comes from one family or the other. It is the nucleus of the nation and can best define human relationship. Marriage is so important in Christian religion that God sees Jesus Christ as the groom and the church as his

bride. Marriage deals with different forms of relationship, from the husband and wife relationship between the couple, to the father and mother relationship they have with their children, relationship between the in laws even the relationship between the children themselves. Marriage parties human flourishing in Nigeria because it encourages mutual respect, tolerance, endurance, self control, long suffering, perseverance e.t.c. between the persons involved. If marriage you learn to live with different people coming from different backgrounds e.t.c.

Marriage under the Act is performed in the Registry or in a Church licensed for that purpose. It is legal. It stipulates the marriage of a man and woman who are of age 18 and above and where the woman is under 18 years she must have the consent of her parents. This type of marriage is voluntary and excludes all others until the union is terminated by death, or is dissolved or annulled by statute or by the decree of a competent tribunal. Under this type of Marriage it is an offence to have a plurality of wives at the same time. The offence is described as **bigamy**. See section 370 of the criminal code.

“Any person who having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband

or wife is guilty of a felony and is liable to imprisonment for seven years
.....”

Dr Glanville Williams in 1945, 61 Law Quarterly Review at pages 76 – 78 gave his appraisal on Bigamy in the following words:-

“The only surviving offence that is still, to my mind, based largely on word – fetishism and bigamy.

Bigamy became a felony by an Act 1603 (in England) At first punishable with death, a maximum of seven years penal servitude. The reason for punishing bigamy is frankly stated by Kenny; it is “the broad one of its involving an outrage upon public decency by the profanation of a solemn ceremony.” Consider what this means; if he deserts his wife and lives with a mistress he commits no crime, either in deserting his wife or in committing adultery. But if he tries to make the position appear more regular by going through a form of marriage with his mistress, then, even though the marriage is totally null and void he commits a felony. And this simply because he is profaning a solemn ceremony”. The ceremony may have taken place in a Registrar’s office but that makes no difference to its solemnity in the eye of the Law

Suppose we were to press for a reason why this profanation of ceremony should thus entail a liability to seven years penal servitude. Is it because the wrath of the Deity needs to be appeased in this manner? That may have been the idea underling the Act of 1603; but it can hardly justify the continuance of the offence in modern Law. For one thing it involves an old Testament conception of the Deity; for another, we now think that an act should not be made a crime unless its commission involves harmful social consequences” the crime of bigamy as it now stands (having regard to the severity with which it is or can be punished) does not make sense except on the supposition that the marriage ceremony is a magic form of words that has to be protected from profanation at almost any cost in human suffering”.

If the continuance of the operation of the Law of bigamy can be regarded by Dr Glanville in 1946 as unreasonable in England where monogamy is their custom, it can be easily seen why it is regarded as outrageous to human flourishing in Nigeria, where Polygamy thrives and is recognized and legal. There are instances of Chiefs who had married in the Registry or in the Church but later to live as flourishing humans either by elevation as a chief, king , elder in society or a political office holder take on other wives, to fit the new status which in their thinking is abominable to the tradition of their new status or high office to be

seen as having just one wife. Many times oblivious of the legal consequence of seven years imprisonment or daring the law to take its course knowing well the law dares not!!

There are instances of white women married to Nigerians who respect the tradition allowing their husbands who have become chiefs to take more wives. It is believed that over 30% of married Nigerian men are guilty of the offence of bigamy. Some women too who married under the Act left their husbands without a formal divorce and remarried. It is believed that no sane spouse would press a case of bigamy, so, the father or mother of their children would be jailed. Therefore, section 370 of the Criminal Code remains one section of the Law that is observed more in the breach as it is on record that the only reported case is the **Queen V Bartholomew Princewill (1963) N.N.LR 54** where the accused contracted a marriage under the Marriage Act at St. Luke's Church, Jos. This marriage was monogamous and the accused was then a Christian. Later he became a moslem and on 16th July 1960 went through a form of marriage by moslem Law with one Fatima. At that time his wife by the Christian marriage was still alive and her marriage to the accused had not been dissolved. It was held by Reed J as he then was that:-

(1) The first marriage contemplated by section 370 is a monogamous marriage.

(2) The form of marriage by moslem Law which the accused went through with the other woman was void within the meaning of sec. 35 of the Marriage Ordinance (now Matrimonial Causes Act).

The accused was convicted and sentenced to one month imprisonment.

At P. 55 of the report Reed J stated thus:-

“I have not been able to find a reported case on section 370 of the Criminal Code. In my experience on the Bench, first as a Magistrate and then as a Judge since 1946, I have not seen a prosecution under this section

I too can say along with Reed J today that since I started practicing as a Counsel in 1980 and became Chief Magistrate Grade 1 in 1992, then Judge in 1999 till date as Chief Judge I have not seen a successful prosecution of anyone under Sec 370 of the Criminal Code. Sometime in 1998 as Chief Magistrate Grade 1 in assigning cases as Administrative Magistrate a case of conspiracy to commit bigamy and bigamy was brought in the Magistrate Court and I quickly assigned it to my court hoping to make history in these parts.

It was a case of a Nigeria lady married under the Act here and she got wind that her husband had travelled overseas to Spain had brought a white lady to wed in Benin City with the connivance of his brothers and Uncle. They were all charged and when the case was called for hearing the wife/complainant disappeared. She would not come to court saying the matter had been resolved. Since our independence, customary law marriage has become more attractive as every marriage has at its base the traditional marriage where dowries are paid for brides by the families of the men they want to marry before they approach the church for blessing of marriage or the marriage ordinance.

However most churches now insist that the intending couple also firstly get married in the Registry or the churches are registered as places where marriage under the Act is conducted. This requirement is to forestall situations where unsuspecting brides who are deceived into thinking they are married under the Act whereas all they had was a church blessing of marriage. In these two areas there is a dividing wall between State and religion. The marriage Act shares some formalities with Church marriage (Religion) like publication of banns and record keeping. Complying with preliminaries without the solemnization does not confer valid marital status. Atimes religion assists the government in matters of health before marriage as some churches requires chastity during courtship and pre-

marital medical tests for HIV status, genotype compatibility, etc Christian marriage or Church marriage is not enforceable under the Marriage Act yet by some sections in the Criminal Code ie Section 33 immunity for a wife of a Christian marriage is provided if she is compelled by her husband to commit some offences. Section 34 states that a husband and wife of a Christian marriage are not criminally responsible for conspiracy between themselves alone; section 36 provides that a husband and wife of Christian marriage are not guilty of stealing each other's property and they cannot institute criminal proceedings against the other during cohabitation. Section 1 of the Criminal Code defines Christian marriage as a marriage recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of all others.

These definitions can easily deceive a layman to think or believe that once parties solemnize marriage in a church, they acquire the status of a marriage under the Marriage Act. The sections in the criminal code above obviously discriminates against those persons married under customary law and moslem law which permits plural wives for a man.

In the case of **Obiekwe V Obiekwe (1963) 7 ENLR 196 at 199, Palmer J** found thus:-

“A good deal has been said about ‘Church Marriage’ or Marriage under Roman Catholic Law”. So far as the law of Nigeria is concerned, there is only one form of monogamous marriage, and that is marriage under the (Act). Legally a marriage in a church (of any denomination) is either a marriage under the (Act) or it is nothing Ifparties (are) not validly married under the (Act) then either they are married under native law and custom or they are not married at all. In either case the ceremony in church would have made not a scrap of difference to either legal status.”

All over flourishing Nigeria many celebrate marriage ceremonies with lots of pomp even in places not licensed for marriages and girls wear wedding gowns taking no step in furtherance of the preliminaries to obtain a valid marriage certificate under the Marriage Act, they thereby do not become man and wife in the eye of the law no matter how long they cohabit.

In a paper by Professor Emeka. Chianu “Charade and feigned Marriages. Religion, Cupidity and law in collision the learned Profession went on to state inter alia:-

“The gullibility some religions spin and which appears to permeate many churches that drives many clergymen. In Nigeria any person can setup a place of

worship anywhere without satisfying any legal formality (deriving from Section 38 of the 1999 constitution) which provides for freedom of thought, conscience and religion). Since most churches put pecuniary considerations ahead of legal interest many Clergymen insist that only persons who marry in Church may partake of holy communion, join the choir, may be employed as church workers, or enjoy countless other privileges in the church. Indeed, the prevailing doctrine in more than a few denominations is that the ultimate prize of obtaining a place in God's bosom in heaven is reserved for those who solemnize their marriage in a church.

In a society where the poverty-stricken and the multi millionaire, lettered and stark illiterate, high and lowly are largely deceived by false religious teachings, crowds flock into churches and they do almost anything and everything clergymen ask of them.

“..... There is a further significant factor: The prohibitive cost of many native law marriages.”

Those who cannot afford it opt to pay a few tens of thousands of Naira for a church blessing and postpone the native law ceremony...”

In the case of **Akparanta V Akparanta (1972) 2 ECSR 785**, there was no evidence that the church where the marriage was celebrated was licensed for that purpose but **Agbakoba J** noted that if there was evidence or circumstances strongly suggesting that the parties intended a monogamous marriage and did in fact celebrate a marriage in a place of worship licensed for the celebration of marriages, the marriage should take effect as statutory. **See Aji V Aji (1975) 5 ECSR 6** where in similar circumstance Araka J ruled that a church ceremony was a charade under the Marriage Act.

In practice a court would decline jurisdiction to hear a divorce case under the Matrimonial Causes Act where there is no Marriage Certificate under the Marriage Act. The mere fact that a place of worship is licensed for marriage should not elevate a charade to a marriage under the Act.

The case of **Mahmud V Mahmud (1977) SLT (notes) 17** is a classical example of law, Religion and marriage where the parties, moslems, went through a ceremony of marriage in a Scottish registry, but upon proof that under Islamic Law a valid marriage required an appropriate religious ceremony which was absent in this case, the marriage was declared invalid under Scots Law. The same situation will play out in Nigeria.

In **conclusion**, I hold the view that there are situations where the law is in conflict with religious beliefs, there are times they are intertwined and other times they run parallel. Marriage in Nigeria are examples of these. If law and religion are for the well being and benefit of all, regulated for the progress of peoples in Nigeria there will be human flourishing. Stakeholders and Government in particular must ensure that these concepts in synergy promote peace and thriving of various religious beliefs. Religion if not well controlled by law may be used by criminal elements in society acting under religious cover to kill and commit atrocities like is being experience in Nigeria thus hindering the flourishing of Nigeria as a State.

There is no doubt this broad topic can be further extensively discussed to broaden the horizon of knowledge and add another plumage to the legal jurisprudence.

I must commend the initiative of the organized of this all important conference and thank you for the privilege of inviting me to share my thoughts with others albeit limited!